

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ELWOOD SMALL,	:
Plaintiff	:
v.	: Case No. 3:12-cv-83-KRG-KAP
JOHN WETZEL, Secretary,	:
Pennsylvania Department of	:
Corrections, <u>et al.</u> ,	:
Defendants	:

Report and Recommendation

Plaintiff Small has filed a motion for reconsideration, docket no. 50. It should be denied. Plaintiff does not suggest an intervening change in controlling law or the availability of new evidence, and does not show the need to correct a clear error of law or prevent manifest injustice. See Wiest v. Lynch, 710 F.3d 121, 128 (3d Cir.2013) (discussing three purposes of motion under Fed.R.Civ.P. 59(e)). Plaintiff asserts that it was error not to *sua sponte* set a date for him to respond to defendant's response to his objections because the defendant's response contained evidentiary material. Neither 28 U.S.C. § 636(b) nor Local Civil Rule 72 contemplate such a procedure.

Furthermore, the Court's order dismissing this case, docket no. 48, states that the Court considered the record, the Report and Recommendation, and the plaintiff's objections. The Court therefore did not rely on the defendant's response or any evidentiary material therein in reaching its decision that, I point out, adopted a Report and Recommendation that could not have considered the yet to be filed response to the yet to be filed objections. Plaintiff is at this point merely quibbling. In a

probably vain effort to forestall another quibble, the statement by the Court that it considered "the record" means the record used in arriving at the Report and Recommendation; it does not mean the Court considered defendant's response, otherwise the mentioning of my Report and Recommendation and the plaintiff's objections thereto would be superfluous.

Pursuant to 28 U.S.C. § 636(b)(1), the parties are given notice that they have fourteen days to serve and file written objections to this Report and Recommendation.

DATE: 7 February 2014

Keith A. Pesto
Keith A. Pesto,
United States Magistrate Judge

Notice by ECF to counsel of record and by U.S. Mail to:

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